

अण्डमान तथा
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अण्डमान तथा निकोबार प्रशासन
ANDAMAN AND NICOBAR ADMINISTRATION
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 2nd November, 2015

No. 280/2015/F.No.3-504/2002-Labour.— In pursuance of Sub-Section (1) of Section 17 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with the Notification No. LR-1(59)/55 dated 13th December, 1955 of the Government of India, Ministry of Labour and A&N Administration's Notification No. 144/2008/ F.No.17-2/2007-Labour dated 7/10/2008, the Secretary (Labour), Andaman and Nicobar Administration, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the reference made to the Industrial Tribunal for adjudication vide Notification No. 174/2012/F.No.3-504/2012-Labour dated 07/08/2012 in the matter of an Industrial Dispute between the Workman Shri Krishna Kumar Bhagel, S/o shri Sukhdev Ram and Divisional Forest Officer, over alleged termination of service has failed.

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS, PORT BLAIR

I.D. CASE No. 04 of 2012

PRESENT : SHRI SUDIP NIYOGI
JUDGE, LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS
PORT BLAIR

Shri Krishna Kumar Bhagel..... First Party

-Versus-

The Divisional Forest Officer, Diglipur..... Second Party

DATE : 09.10.2015

JUDGEMENT

In exercise of the powers conferred under Sub-Section (1) of Section 10 read with Sub-Section (5) of Section 12 and Sub-Section (2-A) of Section 10 of the Industrial Disputes Act, 1947 read with the Notification No. LR-1(59)/55 dated 13th December, 1955 of the Government of India, Ministry of Labour and Andaman & Nicobar Administration's Notification No. 144/2008 F. No. 17-2/2007- Labour dated 07/10/2008, the Secretary (Labour), A&N Administration, the following Schedule of reference was made to this Labour Court, A&N Islands for adjudication.

SCHEDULE OF REFERENCE

“Whether the action of Divisional Forest Officer, Diglipur in retrenching the services of Shri Krishna Kumar Bhagel, Ex- DRM, S/o Sukhdev Ram is legal and justified. If not, what relief the concerned workman is entitled to?”

The case of the First Party workman is that he had worked as Daily Rated Mazdoor under the DFO, Diglipur from 01.01.1997 to 30.11.2001 and during this period from 01.01.1997 to 31.12.1997 he had completed work of 240 days in a 12 calendar months. He requested the Second Party for his continued service but that was refused and ultimately terminated his service before he was engaged for a short spell after a gap of 05 to 06 months. It is alleged that after his termination, the junior workmen were absorbed permanently without consideration of his claim by the Second Party. Thereafter, he took the matter before the Conciliation Officer for amicable settlement which was also failed.

Accordingly to the First Party, no notice under Section 25 F of the I.D. Act, 1947 was served upon him before terminating his service. So, he is entitled to be reinstated in service with back wages.

The Second Party in his written statement claimed that the First Party was engaged in various works from time to time as and when required by the department as a Daily Rated Mazdoor in 1997 but he did not completed 240 days of service in 12 calendar months. It is said that the First Party workman was engaged as un-skilled worker for specific work with a stipulation that his services will be terminated on expiry of the period of engagement without notice in advance and he accepted the conditions. It is said that no prejudice was caused to the first Party.

First Party Shri Krishna Kumar Bhagel was examined as PW-1 and in his affidavit, he stated the same thing as he had stated in his Statement of Demands. According to him, he worked as Daily Rated Mazdoor under the Second Party and during the period from 01.01.1997 to 31.12.1997 he worked for 240 days in 12 calendar months and his service was terminated without complying with the provision under Section 25(F) of the I.D. Act. He produced a copy of the Conciliation Certificate which is marked Exhibit-1 without objection.

DFO, Diglipur Shri R. Ajay Kumar examined himself as O.PW-1. It is found that he produced on office order dated – 06th / 10th February, 1997 of Office of the DFO, Diglipur alongwith a copy of judgment of the Hon'ble Apex Court.

Admittedly, the First Party had been engaged as a Daily Rated Mazdoor under the Second Party.

It is contended by the Second Party that First Party was engaged by the Second Party for doing various works in their department as and when required.

It is also contended by the Second Party that the First Party had accepted the job of Daily Rated Mazdoor on condition that his service would be terminated on expiry of the period of engagement without notice.

The First Party argued that Second Party violated the conditions of Section 25 (F), 25(G) and 25(H) of the Industrial Dispute Act. The said sections of the Industrial Disputes Act are relating to retrenchment of workmen. But those provisions are not at all applicable to the case of the First Party as discontinuation or termination of his service under the Second Party does not amount to retrenchment as per definition of term under section 2 (oo) of the Act.

Therefore, it is clear that the action of the Second Party under the Schedule of reference is legal and justified.

First Party is not entitled to any relief in this case.

Accordingly, it is

Ordered

That the action of the Divisional Forest Officer, Diglipur in retrenching the service of Daily Rated Mazdoor Shri Krishna Kumar Bhagel, is legal and justified.

The claim of the First Party is also dismissed.

Let a copy of this order be forwarded to the Lt. Governor, A & N Islands for information and due publication in the Official Gazette.

Dictated and corrected by me.

**Sd./-
(Sudip Niyogi)
Presiding Officer,
Labour Court, Port Blair.**

By order of the Secretary (Labour),

**Sd./-
(S.S. Chander Sekhar)
Assistant Secretary (Lab.)**